

**NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

DAVID C. TRAYNOR,)	
)	
Appellant,)	CASE NO 05R-030
)	
v.)	DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE DOUGLAS
DOUGLAS COUNTY BOARD OF)	COUNTY BOARD OF EQUALIZATION
EQUALIZATION,)	
)	
Appellee.)	
)	

The above-captioned case was called for a hearing on the merits of an appeal by David C. Traynor to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Commission's Hearing Room on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska, on March 15, 2006, pursuant to a Notice and Order for Hearing issued January 5, 2006. Commissioners Wickersham, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Grace Traynor, the spouse of David C. Traynor, ("the Taxpayer") was present at the hearing without legal counsel.

The Douglas County Board of Equalization ("the County Board") appeared through legal counsel, James R. Thibodeau, a deputy County Attorney for Douglas County, Nebraska.

The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required by Neb. Rev. Stat. §77-5018 (Supp. 2005) to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. The final decision and order of the Commission in this case is as follows.

**I.
FINDINGS**

The Commission finds and determines that:

1. The Taxpayer is the owner of record of certain real property described as Lot 191, Block O, Riverside Lakes, Douglas County, Nebraska, ("the subject property").
2. Taxable value of the subject property placed on the assessment roll as of January 1, 2005, ("the assessment date") by the Douglas County Assessor, value as proposed by the Taxpayer in a timely protest, and taxable value as determined by the County Board is shown in the following table:

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$20,100.00	\$-0-	\$ 20,100.00
Improvement	\$222,200.00	\$-0-	\$179,500.00
Total	\$242,300.00	\$145,000.00	\$199,600.00

3. The Taxpayer timely filed an appeal of the County Board's decision to the Commission.
4. The County Board was served with a Notice in Lieu of Summons, and duly answered that Notice.
5. An Order for Hearing and Notice of Hearing issued on January 5, 2006, set a hearing of the Taxpayer's appeal for March 15, 2006, at 9:00 a.m. CST.
6. An Affidavit of Service which appears in the records of the Commission establishes that a copy of the Order for Hearing and Notice of Hearing was served on all parties.
7. For reasons stated below the Taxpayer has not adduced sufficient, clear and convincing evidence that the decision of the County Board was unreasonable or arbitrary, and the

decision of the County Board should be affirmed.

8. Taxable value of the subject property for the tax year 2005 is:

Land value	\$ 20,100.00
Improvement value	<u>\$179,500.00</u>
Total value	<u>\$199,600.00.</u>

II. CONCLUSIONS OF LAW

1. Subject matter jurisdiction of the Commission is over all issues raised during the county board of equalization proceedings. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equalization*, 7 Neb.App. 655, 584 N.W.2d 353, (1998)
2. The Commission has jurisdiction over the parties and the subject matter of this appeal.
3. All taxable real property, with the exception of qualified agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2004).
4. “Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.” Neb. Rev. Stat. §77-112 (Reissue

2003). Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach. Neb. Rev. Stat. §77-112 (Reissue 2003).

5. Use of all of the statutory factors for determination of actual value is not required. All that is required is use of the applicable factors. *First National Bank & Trust of Syracuse v. Otoe Cty.*, 233 Neb. 412, 445 N.W.2d 880 (1989).
6. "Actual value, market value, and fair market value mean exactly the same thing."
Omaha Country Club v. Douglas County Board of Equalization, et al., 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).
7. The Taxpayer must establish by clear and convincing evidence that the action of the County Board was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016 (7) (Supp. 2005)
Garvey Elevators, Inc. v. Adams County Board of Equalization, 261 Neb. 130, 621 N.W.2d, 523, (2001).
8. "Clear and convincing evidence means and is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved."
Castellano v. Bitkower, 216 Neb. 806, 812, 346 N.W.2d 249, 253 (1984).
9. A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which could lead a reasonable person to the same conclusion. *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736, (2000).

10. A decision is unreasonable only if the evidence presented leaves no room for differences of opinion among reasonable minds. *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 603 N.W.2d 447, (1999).
11. A corporate officer or other representative of an entity, must be shown to be familiar with the property in question and have a knowledge of values generally in the vicinity to be qualified to offer an opinion of value. *Kohl's Dept. Stores v. Douglas County Bd. of Equal.*, 10 Neb. App. 809, 638 N.W.2d, 881 (2002).

III. DISCUSSION

The subject property is an improved residential parcel. The residence is described in Assessor's records as 1,329 square foot ranch style house, built in 1972, with good quality construction and average condition. (E3:1). The home has an attached garage. E3:2). The Taxpayer maintains that the residence does not contain 1,329 square feet of living space, and that the open floor plan, outdated items in the home and its condition negatively impact its actual value as of the assessment date.

A drawing submitted with the Taxpayer's appeal shows a 16 feet by 25 feet opening in the floor. The Taxpayer's spouse testified that the Taxpayer had measured the opening and made the drawing. She also testified that he told her the day of the hearing that the opening was 13 feet by 13 feet. Regardless of its size photographs submitted by the Taxpayer with his appeal clearly show a large opening in the first floor leading to a fully finished living area in the lower floor. The living area of the residence cannot be 1,329 square feet as shown in the Assessor's

records. The evidence of the Taxpayer concerning the size of the opening in the first floor to the lower level is contradictory but the Commission need not decide that question. Evidence of the effect of a change in square feet of living space on actual value does not support any adjustment by the Commission to actual value as determined by the County Board or enable the Commission to make an independent determination of actual value.

Photographs submitted by the Taxpayer support the contention that the residence has not been remodeled since its construction in 1972. The Taxpayer's spouse also testified that the open floor plan of the residence affected its actual value. The floor plan of the residence and a failure to remodel may affect actual value. The Taxpayer has failed however to produce any evidence of the effect of those factors on actual value. The evidence of the effect of those factors on actual value does not support any adjustment by the Commission to actual value as determined by the County Board or to make an independent determination of actual value.

One photograph submitted by the Taxpayer shows a need for painting on a portion of a porch. Condition of an improvement is the extent of physical deterioration or structural damage suffered by the improvement. *Appraising Residential Properties*, Appraisal Institute, Third Edition, p. 120 (1999). The evidence submitted by the Taxpayer is not sufficient for the Commission to determine the condition of the residence.

The Taxpayer has not produced clear and convincing evidence that the decision of the County Board was unreasonable or arbitrary.

**V.
ORDER**

IT IS THEREFORE ORDERED THAT:

1. The decision of the County Board determining taxable value of the subject property as of the assessment date, January 1, 2005, is affirmed.

2. Taxable value of the subject property for the tax year 2005 is:

Land value \$ 20,100.00

Improvement value \$179,500.00

Total value \$199,600.00.

3. This decision, if no appeal is timely filed, shall be certified to the Douglas County Treasurer, and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Supp. 2005).

4. Any request for relief, by any party, which is not specifically provided for by this order is denied.

5. Each party is to bear its own costs in this proceeding.

6. This decision shall only be applicable to tax year 2005.

7. This order is effective for purposes of appeal March 22, 2006.

Signed and Sealed. March 22, 2006.

Wm. R. Wickersham, Commissioner

Susan S. Lore, Commissioner

SEAL

ANY PARTY SEEKING REVIEW OF THIS ORDER MAY DO SO BY FILING A PETITION WITH THE APPROPRIATE DOCKET FEES IN THE NEBRASKA COURT OF APPEALS. THE PETITION MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW CONTAINED IN NEB. REV. STAT. §77-5019 (SUPP. 2005). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.

Commissioner Hans, dissenting, in part.

The Taxpayer did adduce evidence that the decision of the County Board was not based on sufficient competent evidence as required by *Garvey Elevators, Inc. v. Adams County Bd. Of Equal.*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001). The record before the Commission indicates that the County has not inspected the subject property. The County's records do not, for example, indicate that there is a hole in the floor of the first level of the subject property. Additionally the referee who heard the Taxpayer's protest at the County Board level noted that the condition of the subject property was "fair to poor" and recommended that the value of the subject property be reduced to a total value of \$172,800. That recommendation of the referee was overridden and the County Board instead set the value at \$199,600. In order for the Taxpayer to prevail however the Taxpayer must not only show that the decision of the County Board was made arbitrarily, but also that the value of the subject property determined by the County was unreasonable. See, *Garvey Elevators, Inc. v. Adams County Bd. Of Equal.*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001). The Taxpayer was unable to quantify the monetary effect of the opening in the first floor, or the cost to repair the deck on the actual or fair market value of the subject property. The Taxpayer offered no clear and convincing evidence that the value of the subject property as determined by the County Board was excessive. Without this evidence, or other evidence of the actual or fair market value of the subject property

there is no basis for the Commission to arrive at an assessed value other than that determined by the County. (E1). I am forced to conclude that the Taxpayer has failed to show that the assessed value of the subject property determined by the County is unreasonable and must affirm the decision of the County, although not for the same reasons as the majority of the Commission who heard this appeal.

Robert L. Hans, Commissioner